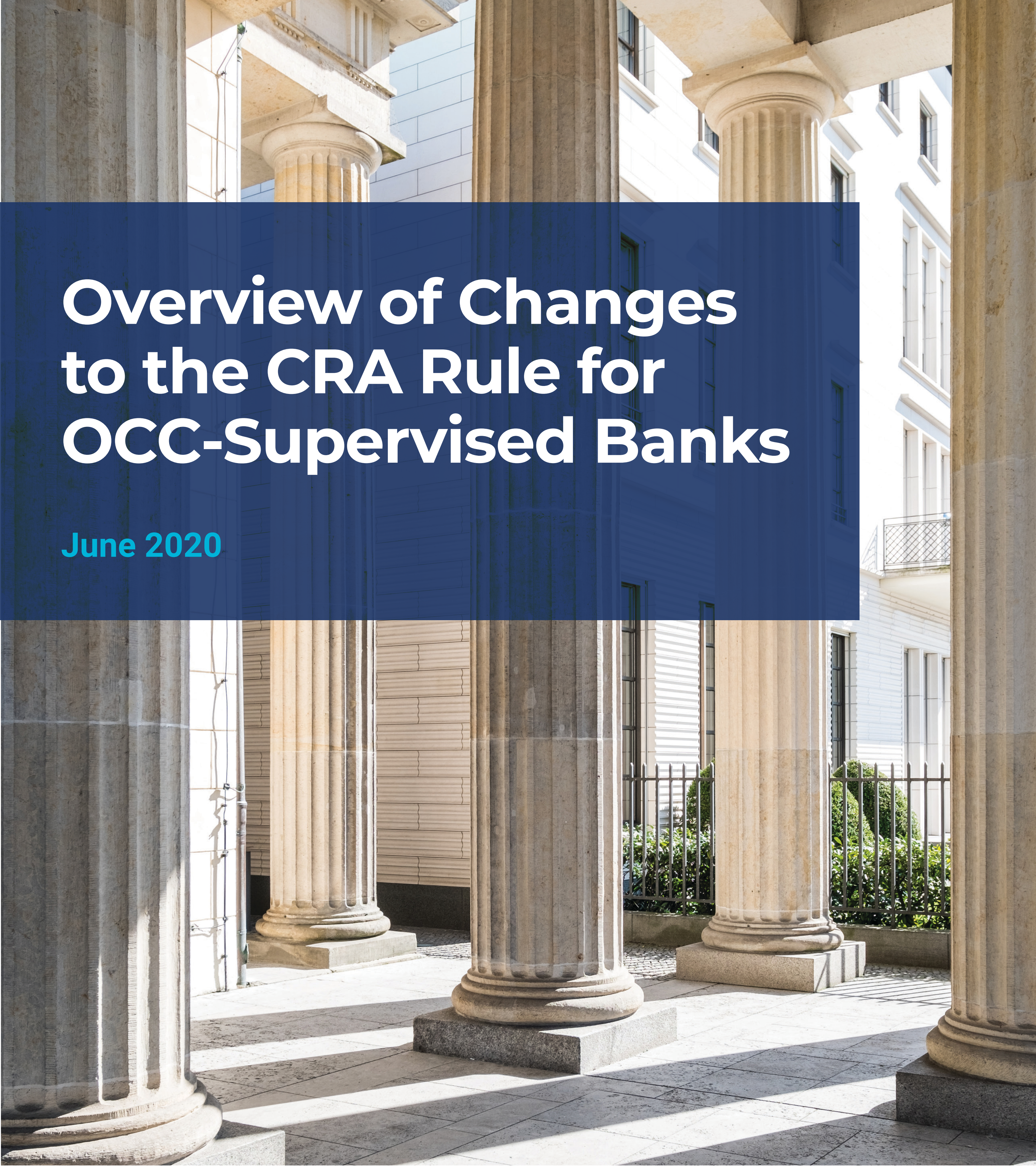

Overview of Changes to the CRA Rule for OCC-Supervised Banks

June 2020

COMMUNITY CAPITAL MANAGEMENT

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The Office of the Comptroller of the Currency (OCC) recently issued a final rule that makes significant changes to its enforcement of the Community Reinvestment Act (CRA) for OCC-Supervised banks. This document provides a broad overview of the final rule including important aspects of the CRA that remain intact, changes that go into effect on October 1, 2020, and final rules that go into effect January 1, 2023 and January 1, 2024.

Important Aspects of the CRA Rule That Remain Intact

- Existing tests for banks designated limited purpose or wholesale, banks under strategic plans, small banks, and intermediate small banks (which will be known simply as "intermediate" banks) have been retained.
  - In general, small banks include those with total assets of $600 million or less while intermediate banks include those with total assets over $600 million but not more than $2.5B.
  - Approximately 200 banks will be examined under the intermediate bank test, which includes 70 banks that will switch from the current large bank test to intermediate on October 1, 2020. The majority of banks (roughly 750 in total) will be examined under the small bank test. This includes about 166 banks that will switch from intermediate to small bank on October 1, 2020. Finally, there remain 28 banks designated as limited purpose, wholesale, and strategic plan banks.
- All current qualified investments that are on a bank's balance sheet on October 1, 2020 will be considered as qualifying activities, but will be known as community development investments instead of qualified investments.
- The concept of performance context remains in the rule; factors to be considered have been codified, as opposed to being included in guidance. Some banks are required to submit information about their performance context to the OCC, on a form that will be made available on its website.
- Ratings will continue to be impacted by evidence of discriminatory and other illegal credit practices if they take place in the bank itself and not an affiliate. Indeed, affiliate activities are no longer considered in any part of the CRA performance evaluation.[1]

[1] Seemingly contradictory language in preamble, page 59, has led to some industry confusion on affiliate activities: "The agency notes, however, that it considers qualifying activities to be conducted by a bank if the bank finances or otherwise supports a qualifying activity, even if the transaction involves an intermediary. The final rule will not require or provide the option for banks to consider affiliates' activities." We sent a request for clarification to the OCC and they responded that they intend to issue some clarifications and guidance before the effective date.

CRA Changes Effective October 1, 2020

The final rule expands the types of activities that will be counted/considered in all types of CRA examinations by redefining CRA-qualified activities. For example, small loans to a business and small loans to a farm are increased to $1.6 million from the current $1 million and $500K cutoffs, respectively. Community development services are no longer limited to those services that relate to the provision of financial services. Affordable housing includes rental housing that is likely to be partially or primarily "inhabited by low- and moderate-income (LMI) individuals or families" as demonstrated by a rental formula instead of actual tenant incomes. Essential infrastructure, such as public roads and bridges, is considered a qualified activity if it serves LMI individuals/families, or CRA targeted areas.

Significant changes affecting all OCC-supervised banks on October 1, 2020

12 CFR 25.03	Definitions of qualifying activities, including small business/farm, home mortgage, and consumer retail loans, community development loans, community development investments (F/K/A qualified investments), community development services, and targeted CRA areas such as CRA deserts, "Indian Country," and underserved areas, among other changes.
12 CFR 25.04	Qualifying activities criteria provides more detail and examples of how retail loans as well as community development loans, investments, and services will be identified.
12 CFR 25.05	Qualifying activities confirmation and illustrative list section describes an illustrative list of examples of qualifying activities that will be publicly available on the OCC's website; it also provides a process for interested parties to request OCC confirmation of qualifying activities, which may be added to the list.
12 CFR 25.06	CRA desert confirmation section describes an illustrative list of areas that are consistent with the CRA rule's definition of CRA desert; it will be available on the OCC's website; also provides a process for a bank to request confirmation that an area is a CRA desert, which may be added to the list.
12 CFR 25.17	Discriminatory and other illegal credit practices has been changed to remove consideration of affiliate activities.
12 CFR 25.24	Activity location section describes how to determine the location of retail loans, community development loans, investments, and services and how to allocate qualifying community development activities across geographic areas, if applicable.

CRA Changes Effective January 1, 2023 and January 1, 2024

OCC-supervised banks with total assets over $2.5B,[2] which is approximately 100 banks, will be subject to a completely new examination approach beginning January 1, 2023.

OCC-supervised banks with total assets over $2.5B,[2] which is approximately 100 banks, will be subject to a completely new examination approach beginning January 1, 2023. The new test, identified as "General Performance Standards," incorporates several complex performance ratios that reflect balance sheet values (with some of these balance sheet values multiplied) of qualifying activities divided by a measure of retail domestic deposits. These ratios are required for every assessment area (AA) and for the bank as a whole. Instead of a separate lending test, retail lending distribution tests are applied for each assessment area on a pass/fail basis. Community development services are converted to dollar values (with some values multiplied) and included in the performance ratios. However, the service test itself has been eliminated; branch numbers and locations have little to no impact on the performance ratios. Likewise, there is no separate investment test as balance sheet values of community development investments (with some values multiplied) are included in performance ratios.

Each AA is rated and banks must perform well in most of them in order to receive at least an overall Satisfactory or Outstanding rating. The bank-level rating reflects not only AA ratings, but considers the dollar values of all CRA qualified activities regardless of location. The OCC will provide performance ratio requirements for ratings at some future date after it collects additional bank data. Once those requirements are determined, banks will be able to establish goals for balance sheet qualifying activity dollar values and performance ratios at assessment area and bank level.

Assessment Area Changes

All banks will be subject to new AA delineation requirements.

All banks will be subject to new AA delineation requirements. For small and intermediate banks, these requirements will be effective on January 1, 2024. All other banks will be subject to the new AA requirements on January 1, 2023. "Facility-based" AA, similar to current requirements, are required for locations where a bank maintains a main office, a branch, or a non-branch deposit-taking facility that is not an ATM as well as the surrounding locations in which the bank has originated or purchased a substantial portion of its qualifying retail loans. The final rule also requires a new "deposit-based" AA for banks that receive 50 percent or more of their retail domestic deposits from geographic areas outside of their facility-based areas; any areas in which such banks receive five percent or more of their retail domestic deposits will need these new AA. The geographic minimums for AA have also been changed. For example, a deposit-based AA may be as large as one whole state but no AA can be smaller than a county. Military banks' AA will consist of the entire United States of America and its territories, instead of the current AA that consists of their entire deposit customer base regardless of location.

[2] *Military banks also must be evaluated under the new General Performance Standards.*

Data Collection, Recordkeeping, and Reporting Requirements

All banks have additional data collection and recordkeeping requirements and some have additional reporting requirements.

All banks have additional data collection and recordkeeping requirements and some have additional reporting requirements. In particular, strategic plan banks and banks evaluated under the new General Performance Standards have significant and comprehensive new data collection, maintenance, and reporting requirements that are effective January 1, 2023. They include performance standards data: the various CRA evaluation measures/ratios, community development minimum ratios, quantified dollar values of qualifying retail and community development loans, quantified dollar values of community development investments and community development services, detailed loan origination data, and assessment area lists. They also must report performance context information before the beginning of their CRA examinations. Finally, at the end of each evaluation period these banks also must report retail lending distribution test ratios and presumptive ratings.

All banks must collect and keep records of each retail domestic deposit account and the physical location of each depositor. These data requirements are effective January 1, 2024 for small and intermediate banks and January 1, 2023 for all other banks. In addition, all banks except small and intermediate banks report their average quarterly retail domestic deposit data, effective January 1, 2023 on an annual basis.

Limited purpose/wholesale banks annually must report the values of community development loans and community development investments as well as assessment area data. They also must report performance context information before the beginning of their CRA examinations.

Outstanding Rating Incentive

For more information on how changes to the CRA rule impact OCC-supervised bank in the CRA Qualified Investment Fund, click here ►

Finally, the new rule adds an incentive for an overall rating of Outstanding. Presently, banks rated Outstanding receive little more than bragging rights. The OCC's new CRA rule states that the agency will make available the ratings of all OCC-regulated banks and a list of all banks that achieve an assigned rating of Outstanding.[3] A bank that achieves an Outstanding assigned rating will receive a certificate or seal of achievement that may be displayed on its website and in its main office, branches, and non-branch deposit-taking facilities. Such banks may also be eligible for a five-year evaluation period rather than the typical three-year evaluation period.

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[3] The OCC posts all public performance evaluations, which include bank ratings, on its website presently, although it is not in the form of a list of all banks rated Outstanding.